

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW MEXICO**

**In re:**

**PETTINGILL ENTERPRISES, INC.,  
a New Mexico Corporation**

**Case No. 12-10515 s11**

**MOTION TO ALLOW BANE MACHINERY PRIORITY  
ADMINISTRATIVE EXPENSE**

COMES NOW Bane Machinery, Inc., (hereinafter “Lessor” or “Bane Machinery”) a Texas corporation, by and through its attorney, Louis Puccini, Jr., Puccini Law P.A., and hereby moves the Court for the entry of an Order pursuant to 11 U.S.C. §§ 502, 503 and 507 to allow Bane Machinery a priority administrative expense for the use and lease of its equipment post-petition including, but not limited to, any and all damages as a result of the Debtor utilizing such equipment post-petition, including repair costs, legal fees, and other expenses. This Motion is filed pursuant to Rule 9014 and applicable bankruptcy law. As grounds therefore the Movant states:

1. The Movant/Lessor entered into three (3) equipment Rental Contracts with the Debtor pre-petition as follows:

A. Rental Contract dated November 12, 2010 on Kobelco Excavator with a Geith attachment for a total monthly rental rate, including taxes, of Six Thousand Nine Hundred Eighteen Dollars and Nineteen Cents (\$6,918.19) per month. A true and accurate copy of the Rental Contract is adopted herein as referenced in the Motion to Lift Stay.

B. Rental Contract dated November 12, 2010 on Kawaski Wheelloader with Rockland attachment for a total monthly rental rate, including taxes, of Five Thousand Eight Hundred Seventy Dollars and Eighty Two Cents (\$5,870.82). A true and accurate copy of the Rental Contract is adopted herein as referenced in the Motion to Lift Stay.

C. Rental Contract dated December 8, 2010 for a Kobelco Excavator, along with a seventy two inch (72") Geith attachment for a total monthly rental rate, including taxes, of Six Thousand Nine Hundred Eighteen Dollars and Nineteen Cents (\$6,918.19) is adopted herein as referenced in the Motion to Lift Stay.

2. The Debtor filed a voluntary Chapter 11 on February 14, 2012 and remains as Debtor/Debtor-In-Possession.

3. The Debtor is incurring rental equipment charges of approximately Twenty Thousand Dollars (\$20,000.00) per month since February 15, 2012, and has failed and refused to make any payments.

4. The Debtor is utilizing the equipment for its use and benefit and to benefit the estate, to generate income and in the operation of its business.

5. The Debtor has failed and refused to comply with 11 U.S.C. § 365(d)(5) by complying with its obligations under the Rental Contracts post-petition.

6. The Movant, Bane Machinery/Lessor is entitled to a priority administrative claim ahead of all other administrative claims pursuant to applicable bankruptcy law establishing the priority of such claims pursuant to 11 U.S.C. § 503 and § 507.

7. In the event that all post-petition priority administrative claims are not paid in full then the Bane Machinery/Lessor requests the Court to enter an Order requiring all other post-petition priority administrative claims to disgorge an amount so that all post-petition priority administrative claims may be paid *pro rata* in the order of their legal priority.

8. The Debtor does not consent to the relief requested in this Order and the relief is opposed. Notice of the relief requested is being served upon all parties entitled to receive notice.

WHEREFORE, Bane Machinery, Inc., Lessor, respectfully moves the Court to enter an Order determining the amount of its allowed priority administrative claim, to require the Debtor to pay such claim in full, and in the event that the claim is not paid in full, to require any and all other post-petition administrative claims to disgorge any and all amounts so that all priority administrative claims may be paid pro rata in accordance with their legal priority pursuant to applicable bankruptcy law and for other just relief.

Respectfully Submitted,

**PUCCINI LAW, P.A.**

By: Electronically submitted May 25, 2012

Louis Puccini, Jr.

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### **CERTIFICATE OF SERVICE**

In accordance with F.R.B.P. 9036, NM L.B.R. 9036-1(b) and F.R.C.P. 5(b)(3), I hereby certify that service of this document was made on May 25, 2012 via the Notice Transmission Facilities of the Case Management and Electronic Filing System of the United States Bankruptcy Court for the District of New Mexico to all parties requesting Notice.

**PUCCINI LAW, P.A.**

By /s/

Anne M. Chavez

Paralegal for the Firm